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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Usage of the Public Switched Network by Information Service and Internet Access Providers	)	CC Docket No. 96-263

REPLY COMMENTS OF THE AD HOC TELECOMMUNICATIONS USERS COMMITTEE

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April 23, 1997

SUMMARY

The Ad Hoc Telecommunications Users Committee, an organization of large users of telecommunications and information services, has a keen interest in the proliferation of reasonably priced information services provided in a competitive environment. The circuit-switched voice network is technologically inferior for data traffic and customers who generate such traffic need more advanced services -- services the incumbent local exchange carriers ("ILECs") have failed to provide and are unlikely to provide without Commission intervention.

History teaches that only competition will produce innovative products and services at prices set near cost. Dominant providers, such as the ILECs, lack the incentive to innovate or price their services aggressively in the absence of competition. This inertia has forced the Commission repeatedly to impose regulatory requirements on dominant carriers to reduce barriers to competitive entry – and the Commission's strategy has consistently benefited consumers.

In their initial comments, ILECs urge the Commission to impose access charges or some other usage charges on information service providers ("ISPs") to encourage the ILECs to build more data-friendly facilities and to discourage the use of the circuit-switched voice network for information services. To justify their proposal, the ILECs claim that they are not being adequately compensated for ISP traffic and that such traffic is congesting their networks. These claims are uniformly specious.

First, it is illogical to assume that increasing the revenues ILECs earn from information services provided on their voice networks will encourage them to build alternative networks; and their track record on innovation casts serious doubt on their willingness to do so, at least until they face meaningful competition.

Second, discouraging the growth of information services – the inevitable result of the ILECs' proposal – would be directly contrary to the Commission's objectives expressed in the Notice of Inquiry, not to mention Congress' fundamental goal in passing the 1996 Telecommunications Act, *i.e., encouraging* the rapid deployment of such services.

Third, available information unequivocally demonstrates that the ILECs have reaped huge financial rewards from the growth of information services and that their claims of network congestion are grossly exaggerated.

Perhaps most critically, the ILECs' proposal would discourage competitive entry of alternative data service providers and thereby squelch technological innovation and price competition.

Other commenters have put forth a far better plan. Various users, ISPs, and other parties have advocated an approach that the Ad Hoc Committee endorses. Their proposals would require the ILECs to open their networks to competing data service providers and ISPs by unbundling network elements and sub-elements, and offering competing carriers and ISPs liberal interconnection and collocation opportunities broader than those available under existing rules. These new offerings should be priced according to their long-run incremental

costs, which the Commission and Federal-State Joint Board on Universal Service have both endorsed as appropriate indicia of the ILECs' costs in the contexts of implementing the interconnection and universal service provisions of the 1996 Act, respectively.

If implemented, these proposals would encourage competition, among both data transmission service providers and ISPs, thereby spurring the introduction of advanced technologies, and lowering users' costs. Imposition of access charges or some other form of usage charge on ISPs would produce none of these benefits.

The Ad Hoc Committee therefore urges the Commission to be single-mindedly focused on a pro-competitive, forward-looking approach to any challenges that the Internet and other information services may pose.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Usage of the Public Switched	)	CC Docket No. 96-263
Network by Information Service	)	
and Internet Access Providers	)	

REPLY COMMENTS OF THE AD HOC TELECOMMUNICATIONS USERS COMMITTTEE

The Ad Hoc Telecommunications Users Committee (the "Ad Hoc Committee" or the "Committee") submits these Reply Comments in response to the Notice of Inquiry[1] and the initial comments filed in this docket.

INTRODUCTION

The comments that have been submitted in this proceeding make several points clear. First, the Commission lacks sufficient empirical information about network usage to conclude that Internet usage has adversely affected the Public Switched Telephone Network ("PSTN") and therefore, that new rules are required to remedy this alleged situation.

Second, the circuit-switched voice network is poorly suited to current and future data applications, and the public desperately needs new technological solutions to meet its burgeoning demands for information services and underlying data transmission services.

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[1] *Usage of the Public Switched Network by Information Service and Internet Access Providers*, CC Dkt. No. 96-263, Notice of Inquiry, FCC 96-488 (released Dec. 24, 1996) (*NOI*).

Third, the incumbent local exchange carriers ("ILECs") are inherently inclined to focus on serving their largest market, the switched voice market. Allowing the ILECs to levy additional charges on Information Service Providers ("ISPs" or "ESPs"[2]) will not make their networks more data-friendly.

Fourth, the most efficient way the Commission can encourage the growth of information services and the introduction of advanced data transmission technologies is to require ILECs to open their networks to competing carriers and ISPs on terms that promote, rather than discourage, competition. This would eliminate barriers to competitive entry by alternative data service providers and allow ISPs to develop their own technological solutions using both existing ILEC networks and, eventually, competing data networks.

I. THE COMMISSION SHOULD CAREFULLY CONSIDER THE NEEDS OF USERS OF THE INTERNET AND OTHER INFORMATION SERVICES IN DEVELOPING RULES AND POLICIES TO PROMOTE THE DEVELOPMENT OF THOSE SERVICES.

All the major interest groups filing comments in this docket – incumbent carriers, users, and representatives of various sectors of the information technology ("IT") industry (including ISPs) -- agree that today's circuit-switched voice network is unsuitable for users of the Internet and other information services. These groups disagree, however, on the solution to this problem. Ultimately, the Commission must decide whether the ILECs' solution or the solution advocated by users and ISPs would best serve the public interest. The

[2] Because of the similarity between the Commission's definition of "enhanced service," 47 C.F.R. § 64.702(a), and the Telecommunications Act or 1996's definition of "information service," 47 U.S.C. § 153(20), the Ad Hoc Committee refers to Information Service Providers ("ISPs") and Enhanced Service Providers ("ESPs") interchangeably.

Ad Hoc Committee submits that the choice is clear: For the reasons set forth below, the Commission should adopt the pro-competitive proposals of users and IT parties, both of which groups could be profoundly affected by regulatory or policy changes concerning the Internet and other information and data services.

The ILECs want to retain their unique strategic position as the toll booth operators on the Information Superhighway. They advocate regulatory changes that would buttress structural and regulatory barriers to competitive entry and innovation. The ILECs urge the Commission to impose new charges on ISPs, both to finance ILEC construction of new facilities and to discourage ISPs from using the circuit-switched network for data traffic.[3] The ILECs' proposals might serve the ILECs' pecuniary needs, but they would ignore the needs of users of information services. Imposing new charges on ISPs and their customers would artificially suppress demand for information services and fail to provide incentives for alternative providers of data transmission capacity to enter the market.

Information service users and ISPs envision a sharply different solution : Rather than further enriching incumbent carriers through new regulatory charges and assuming that the ILECs will use their new revenue streams to deploy advanced technologies and services – an assumption that is not borne out by

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[3] *E.g.*, Comments of Bell Atlantic/NYNEX on the *Notice of Inquiry* in CC Dkt. No. 96-263, at 13 (March 24, 1997) [hereinafter *Bell Atlantic/NYNEX Comments*]; Comments of Pacific Telesis Group, on the *Notice of Inquiry* in CC Dkt. No. 96-263, at 17 (March 24, 1997) [hereinafter *PacTel Comments*]; Comments of United States Telephone Association, on the *Notice of Inquiry* in CC Dkt. No. 96-263, at 15 (March 24, 1997) [hereinafter *USTA Comments*].

history – users, ISPs, and other IT industry commenters have proposed an approach driven by competition.[4] Under their proposal, the Commission would adopt rules designed to eliminate barriers to competitive entry by alternative data service providers, expand the ability of ISPs to interconnect their facilities with those of the ILECs, and establish pricing rules for ILEC network elements that would simulate competitive conditions until meaningful competition among data service providers has developed. In contrast to the ILECs' proposal, the users' and ISPs' proposals would encourage the development of new technologies and services, advance the pro-competitive purposes of the Telecommunications Act of 1996, and promote the development of information services and advanced telecommunications services.

A. Users Need More Advanced Network Services Conducive to Data Traffic, Not More Capacity on the Circuit Switched Voice Network.

The Ad Hoc Committee's membership provides a representative cross-section of large users of data and information services. The day-to-day operations of the Committee's members requires the transmission of substantial volumes of data traffic. Members of the Ad Hoc Committee use data transmission services for a wide variety of applications, including credit, charge and debit card authorizations; automated teller machine transactions; direct bank deposits; securities transactions; electronic insurance benefits transfers;

[4] *See* Comments of the General Services Administration and the United States Department of Defense, on the *Notice of Inquiry* in CC Dkt. No. 96-263, at 3-4 (March 24, 1997) [hereinafter *GSA/DOD Comments*]; Comments of the Internet Users Coalition, on the *Notice of Inquiry* in CC Dkt. No. 96-263, at 9-10 (March 24, 1997) [hereinafter *IUC Comments*]; Comments of the Internet Access Coalition, on the *Notice of Inquiry* in CC Dkt. No. 96-263, at 35-39 (March 24, 1997) [hereinafter *IAC Comments*].

internal corporate data transfers via local area networks and wide area networks; database queries; commerce over the Internet; and electronic mail.

All these applications could be enhanced by the introduction of technologies that provide greater bandwidth and higher transmission speeds than are presently available over the circuit switched network. For example, widespread availability of packet switching would be a superior data transmission alternative to the circuit-switched network for a number of reasons. First, unlike circuit-switching, packet switching does not require that a physical end-to-end circuit be maintained during the entire length of a data transmission "call"; therefore, packet switching is far more efficient than circuit switching for data transmissions.[5] Second, in a packet-switched network, data is sent in bursts of packets, rather than a continuous stream. This characteristic makes packet switching particularly well suited for data transmissions of very short duration, such as credit, charge, and debit card authorizations, and automated teller transactions.

While the Internet is a packet-switched network, the PSTN is not. The growth of information services would be enhanced if data traffic could be intercepted at or before the originating ILEC end office and handed off to packet-switched data service providers or ISPs. Existing regulations, however, permit

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[5] *See* IAC Comments at 14-15.

ILECs to bundle network elements and subelements and block competing carriers' access to critical ILEC facilities.[6]

Another example of a technology that would greatly benefit large users of data transmission services is the xDSL family of modems.[7] There are at least four variants of xDSL technology: HDSL ("High-bit-rate Digital Subscriber Line"), SDSL ("Single-pair, high-bit-rate Digital Subscriber Line"), ADSL ("Asymmetric Digital Subscriber Line"), and VDSL ("Very high-bit-rate Digital Subscriber Line"). Each of these technologies enables users to transmit data over the same pair of twisted copper wires that is used for voice telephony at significantly higher speeds than with ordinary modems.[8]

Despite their obvious advantages, xDSL modems have not been widely deployed. It appears that their scarcity is due in part to the need to locate an xDSL modem either at the ILEC central office serving an xDSL user or (if the local loop between the user and the central office exceeds certain distances) between the user's premises and the central office.[9] The ILECs, who are in the best position to deploy xDSL modems throughout their networks, have shown only modest interest in the technology; therefore, until they allow ISPs and

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6 *See infra,* pages 19-20.

7 Comments of MCI Communications Corporation, on the *Notice of Inquiry* in CC Dkt. No. 96-263, at 11 (March 24, 1997) [hereinafter *MCI Comments*]; Comments of CompuServe Incorporated and Prodigy Services Corporation, on the *Notice of Inquiry* in CC Dkt. No. 96-263, at 14 (March 24, 1997) [hereinafter *CompuServe/Prodigy Comments*]; Comments of America Online, Inc., on the *Notice of Inquiry* in CC Dkt. No. 96-263, at 18 (March 24, 1997).

8 IAC Comments at 18 - 21.

9 *Id.* at 18, 21-22.

competing data service providers to locate xDSL modems at their central offices and allow non-ILECs to place xDSL modems between users' premises and their central offices, the deployment of xDSL technology will be retarded and users' data services demands will not be well met.

B. Users Need Multiple Sources of Supply for Data Services and Policies That Promote, Rather that Stifle, Innovation.

Users need the Commission to adopt a regulatory program that will encourage the entry of new service providers who are willing to deploy new technologies, since the ILECs themselves have so far been reluctant to step up to the plate. A variety of commenters has recognized that only competitive entry by alternative providers will result in the introduction of services that are well suited to data traffic. MCI, for example, stated that "only competition in the local exchange market can assure that the most efficient technologies are deployed and offered at prices attractive to ISPs."[10] The United States Internet Providers Association similarly remarked that "the solution to the development of broadband networks in the United States can be summed up in one word – competition."[11]

It is well established that only vigorous competition among multiple providers of products and services promotes innovation and that dominant firms facing little or no competition lack the incentive to introduce innovative products

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[10] MCI Comments at 10.

[11] Comments of the United States Internet Providers Association, on the *Notice of Inquiry* in CC Dkt. No. 96-263, at 20 (March 24, 1997) [hereinafter *USIPA Comments*].

and services. In *Specialized Common Carrier Facilities*,[12] the Commission sought to promote competition among carriers as a means of introducing new products and services. It explained its objectives:[13]

> In proposing a policy favoring the entry of new specialized common carriers, we look toward a degree of competition oriented toward the development of new communications services and markets and the application of improvements in technology to changing and diverse demands. . . . [W]e anticipate that the new carriers would be developing new services and would thereby expand the size of the total communications market.

The Commission rejected AT&T's claims that allowing new entrants to provide specialized common carrier services would be detrimental to users who did not subscribe to the specialized services. It reasoned that the new entrants would meet "evolving, new, diverse, and specialized needs in a dynamic, rapidly growing market" which "would be best served by wider sources of competitive supply."[14] The Commission's reasoning is as applicable to specialized data traffic today as it was to other specialized services in the early 1970s.

The ILECs' apparent lack of interest in deploying Integrated Services Digital Network ("ISDN") technology provides a good example of the inertia that paralyzes monopolists that do not face competition. Although ISDN was first

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12 *Establishment of Policies and Procedures for Consideration of Applications to Provide Specialized Common Carrier Services*, 29 F.C.C.2d 870, *recon.*, 31 F.C.C.2d 1106 (1971), *aff'd sub nom. Washington Utilities and Transportation Commission v. FCC*, 513 F.2d 1142 (9th Cir.), *cert. denied*, 423 U.S. 836 (1975).

13 *Specialized Common Carrier Facilities*, 29 F.C.C.2d 870, para. 29.

14 *Id.* at paras. 82 & 85.

contemplated in the early 1970's, in the more than 20 years that have elapsed since then, switched ISDN has still not been made available on a ubiquitous basis, and packet-switched ISDN, which was envisioned in the '70's, has not been made generally available.[15] Moreover, the ILECs' draconian ordering, provisioning, and pricing practices for ISDN suggest that they have little interest in ISDN's success in the marketplace. In the meantime, other technologies have overtaken ISDN. Such sluggishness in deploying new technology will continue as long as ILECs do not lose customers to competing providers offering better technology.[16]

C. Users Need Economically Rational Pricing of Data Services.

ISPs (and, indirectly, their customers) should not be forced to pay excessive charges for network elements that that they need. Nor should they be required to purchase network elements and services they do not want. And yet, that is the current state of the local exchange and exchange access markets, as a result of a lack of competition in those markets.

The ILECs' present pricing practices – namely, their bundling of network elements and services that ISPs and their customers neither need nor want and pricing of those elements and services well in excess of economic cost – distort demand for ILEC network elements and the information services that depend on

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[15] IAC Comments at 23. MCI writes that "[t]he incumbent LECs' record in the provision of advanced services is dismal. For example, the incumbent LECs have introduced ISDN services only slowly or at prohibitive rates." MCI Comments at 12.

[16] For a further discussion of the effect of competition on the deployment of new products and services, see *infra*, Section II.A.

them. Such practices also send inaccurate pricing signals to the marketplace and impede the development of competition.

Competition is, of course, the most effective disciplinarian of economically irrational pricing. The Commission recognized this almost twenty years ago in the *Competitive Carrier Rulemaking,*[17] where it stated:

> [W]e believe that the marketplace will ensure that price differentials [among competing carriers] are not unreasonable – *i.e.*, they will be cost-related and will benefit, rather than burden, both competition and the ratepayer. Just as competition and the absence of market power prevent the [other common carriers] from establishing supracompetitive prices for their services, these same factors preclude these carriers from unjustly discriminating in favor of some customer at the expense of other customers.

Thus, to the extent that meaningful competition can develop, users will benefit from the pricing discipline it brings.

Until real competition develops, however, users of data services (including ISPs) will not realize the benefits of competitive pricing unless the Commission requires pricing that replicates competitive conditions. The Commission did this in the *First Interconnection Order,*[18] where it set prices for ILECs' unbundled network elements ("UNEs") on the basis of "Total Element Long-Run Incremental Cost" or "TELRIC." The Commission determined that TELRIC is the appropriate measure of the ILECs' forward-looking economic cost of

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17 *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor,* Notice of Inquiry, 77 F.C.C.2d 308 (1979) (subsequent history omitted) at para. 54.

providing UNEs[19] and that "[a]dopting a pricing methodology based on forward-looking, economic costs best replicates, to the extent possible, the conditions of a competitive market."[20] Forward-looking cost-based pricing "reduces the ability of an incumbent LEC to engage in anti-competitive behavior" by selling competitors bottleneck facilities at a wholesale rate higher than the economic cost the LEC incurs in providing its own competing services.[21]

Forward-looking prices "give appropriate signals to producers and consumers and ensure efficient entry and utilization of the telecommunications infrastructure."[22] In its *Recommended Decision on Universal Service,* the Federal-State Joint Board explained that forward-looking economic costs "best approximate the costs that would be incurred by an efficient competitor entering the market."[23] Users benefit from forward-looking pricing because it "allows the requesting carrier to produce efficiently and to compete effectively, which should drive retail prices to their competitive levels."[24]

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18 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* First Report and Order, 11 FCC Rcd 15499, para. 679 (1996), *petition for review pending sub nom. Iowa Utilities Board v. FCC,* No. 96-3321 (8th Cir.).

19 *Id.* at para. 678.

20 *Id.* at para. 679.

21 *Id.*

22 *Id.* at para. 630.

23 *Federal-State Joint Board on Universal Service,* CC Dkt. No. 96-45, Recommended Decision, 12 FCC Rcd 87, para 270 (1996). The Board continued: "If [universal service] support is based on embedded costs for the long-run, then incumbents and new entrants alike will receive incorrect signals about where they should invest." *Id.* at para. 275.

24 *First Interconnection Order, supra,* note 18, 11 FCC Rcd 15499, para. 679.

The ILECs themselves have long argued for the flexibility to set prices for access and other services that face actual competition on the basis of forward-looking incremental cost. They claim that such competition is "uneconomic" if their rivals can price at forward-looking costs while the ILECs are forced to set rates at the higher, historic cost levels.[25]

Most switched access services do not confront effective competition at this time. Thus, if competition is to emerge in the provision of data services similar to those provided by the ILECs, the Commission should prescribe rate levels for the access elements that ISPs and CLECs need to provide their respective services. Such cost-based rates would benefit users of information services by encouraging the entry of multiple providers of data and information services, which, in turn, would spur the introduction of advanced technologies to meet users' needs. But cost-based rates alone will be insufficient to meet marketplace needs.

II. COMMISSION INTERVENTION IS NEEDED TO FACILITATE THE EMERGENCE OF COMPETITION IN THE PROVISION OF DATA SERVICES AND THE DEPLOYMENT OF ADVANCED TECHNOLOGIES.

Several commenters have argued that incumbent LECs would willingly develop the current network architecture to accommodate data-friendly services if only they were properly compensated for doing so.[26] The facts, however, do not support these arguments. Although ILECs traditionally have served the

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[25] *See, e.g.*, Comments of USTA, on the *Order on Motion for Extension of Time* in CC Dkt. No. 94-1, at 30-31 and Attachment 1, pp. 8-9 (December 11, 1995).

[26] *See, e.g.*, Comments of GTE Service Corporation, on the *Notice of Inquiry* in CC Dkt No. 96-263, at 4-5 (March 24, 1997) [hereinafter *GTE Comments*]; USTA Comments at 5.

needs of the mass market, they have done little to meet specialized communications needs.

A. Only the Presence of Real Competition, Prompted by the Opening of ILEC Networks, Will Encourage the ILECs to Deploy Data-Friendly Technologies.

Commenters have noted that the 1996 Act was enacted to promote competition and the growth of advanced telecommunications and information services, not to further entrench monopolists and thwart the emergence of new service providers.[27] Indeed, the Joint Explanatory Statement of the Conference Committee on the Act clearly recited Congress's policy objectives: to "provide for a procompetitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."[28]

The Commission, too, has recognized that competition is the most effective spur to the introduction of new, market-responsive services. In its *First Interconnection Order*, for example, the Commission found that competition will bring economic and social benefits to consumers of local services and "eventually will eliminate the ability of an [ILEC] to use its control of bottleneck local facilities to impede free market competition."[29] In turn, the opening of such

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27 *See, e.g.,* IAC Comments at 2; GSA/DOD Comments at 3-4.

28 Joint Explanatory Statement of the Committee of Conference, Conference Report on S. 652, Telecommunications Act of 1996, H. Rept. 104-458, January 31, 1996, at introduction.

29 *First Interconnection Order supra,* note 18, 11 FCC Rcd 15499, para. 4.

markets will "blur traditional industry distinctions and bring new packages of services, lower prices and increased innovation to American consumers."[30] Recognizing the value of competition, however, was not new to the Commission when it rendered the *First Interconnection Order.*

1. History demonstrates that, absent Commission adoption of rules that open dominant carriers' networks, those carriers will not be motivated to deploy advanced products and services and competition will be thwarted.

Traditionally, dominant carriers, such as the ILECs, have focused on serving the lowest common denominator, the mass market, and have ignored or frustrated the expansion of emerging niche markets. On more than one occasion, this pattern of inertia has compelled the Commission to direct dominant carriers to open their networks so that new entrants could introduce more innovative products and services for use in conjunction, or in competition, with dominant carriers' own products and services.

For example, prior to the Commission's landmark *Carterfone*[31] decision in 1968, the "public" telephone network was virtually closed to interconnection of most equipment or facilities not furnished by the franchised telephone utilities. *Carterfone* rescinded the outright prohibition of such "foreign attachments," but permitted AT&T to require customers using non-AT&T equipment to purchase so-called "protective connecting arrangements" ("PCAs") to be used as physical interfaces between customer-provided equipment and the public network,

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30 *Id.*

31 *Use of the Carterfone Device in Message Toll Telephone Service*, 13 F.C.C.2d 420, *recon. denied*, 14 FCC 2d 571 (1968).

ostensibly to protect against "harm to the network." In practice, the PCA requirement stifled competition in the customer premises equipment ("CPE") market.[32]

By requiring, PCA, AT&T limited competing CPE providers' flexibility to introduce new types of equipment, produced grossly inefficient technical approaches by competing CPE providers, and created formidable economic barriers to most CPE competition. In many cases, monthly charges for required PCAs exceeded the monthly charges for the carrier-supplied equipment customers wanted to replace. Thus, it was not in customers' economic interests to consider replacing incumbent carriers' equipment with even low-cost competing CPE.[33]

Although the Commission eliminated the PCA barrier by replacing it with a Commission-administered equipment registration program,[34] carriers' bundling of CPE rental charges with basic exchange telephone services still impeded CPE competition. Because of this bundling, a customer would receive no rate reduction even if he replaced his rented "main" telephone instrument with a unit

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32 *See generally Litton Systems, Inc. v. Amer. Tel. And Tel. Co.*, 700 F.2d 785 (2d Cir. 1983) (*"Litton"*).

33 *Litton, supra,* note 32, 700 F.2d at 798-802 & n.n. 15, 17.

34 *Proposals for New or Revised Classes of Interstate and Foreign Message Toll Telephone Service (MTS) and Wide Area Telephone Service (WATS)*, CC Dkt. No. 19528, *First Report and Order*, 56 FCC 2d 593 (1975), *Second Report and Order*, 58 FCC 2d 736 (1976), *aff'd sub nom. North Carolina v. F.C.C.*, 552 F.2d 1036 (4th Cir. 1997); *cert. denied,* 434 U.S. 874 (1977).

he purchased from another CPE provider.[35] Once again, there was no incentive for the customer to purchase a competitive, even cheaper, product.

The Commission finally succeeded in creating a truly "open" CPE environment by adopting rules in the *Second Computer Inquiry*[36] that required the unbundling of CPE from basic telephone service. Only the Commission's adoption of unbundling requirements ushered in an open CPE environment, which has led, undeniably, to a fully competitive CPE marketplace.

A similar scenario unfolded with respect to opening the public network to interexchange transmission service competition. In 1971, the Commission authorized limited "specialized" private line competition and subsequently ordered AT&T and other established carriers to allow other long distance providers to interconnect private line services with existing monopoly carriers' local and long distance networks.[37] Like AT&T's CPE PCA requirement, carrier-imposed interconnection arrangements were cumbersome and inefficient, requiring customers to dial 25 or more digits to place calls through competing

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35 *Amendment of Section 64.702 of the Commission's Rules and Regulations,* CC Dkt. No. 20828, 77 F.C.C. 380 (*Second Computer Inquiry*)(1980) at 442-46.

36 *Second Computer Inquiry, Notice of Inquiry and Proposed Rulemaking,* 61 FCC 2d 103 (1976), *Supplemental Notice of Inquiry and Enlargement of Proposed Rulemaking,* 64 FCC 2d 771 (1977), *Tentative Decision and Further Notice of Inquiry and Rulemaking,* 72 FCC 2d 358 (1979), *Final Decision,* 77 FCC 2d 384; *modified on recon.,* 84 FCC 2d 50 (1980); *modified on further recon.,* 88 FCC 2d 512 (1981), *aff'd sub nom. Computer and Communications Industry Association v. FCC,* 693 F.2d 198 (D.C. Cir. 1982), *cert. denied,* 461 U.S. 938 (1983); *aff'd on second further recon.,* 56 Rad. Reg. 2d 301 (1984).

37 *Establishment of Policies and Procedures for Consideration of Applications to Provide Specialized Common Carrier Services in the Domestic Public Point-to-Point Microwave Radio Service,* Dkt. No. 18920, *Notice of Inquiry to Formulate Policy, Notice of Proposed Rulemaking, and Order,* 24 FCC 2d 318, *Memorandum Opinion and Order* (designating issues for oral argument), 26 FCC 2d 840 (1970), *First Report and Order,* 29 FCC 2d 870, *recon. denied* 31

interexchange carriers ("IXCs"), compared to the maximum 11 digits they would dial to place long-distance calls over AT&T's facilities. New IXCs persisted in demanding better interconnection, including trunk-side access and uniform dialing arrangements, all of which were necessary for them to become truly competitive, but it was not until the antitrust action dismantling AT&T and the resulting *Modification of Final Judgment* that equal access became a realistic possibility. [38]

Through its Part 69 access charge rules, the Commission altered the economic relationship between IXCs and ILECs, significantly reducing per-minute charges IXCs paid for interconnection to LEC networks for call origination and termination. [40] In doing so, the Commission markedly improved efficiency and innovation and advanced the cause of competition in the interexchange telecommunications services market.

FCC 2d 1106 (1971), *aff'd sub nom. Washington Utilities & Transportation Commission v. FCC*, 513 F.2d 1142 (9th Cir. 1975).

38 *United States v. Amer. Tel. & Tel. Co.*, 552 F.Supp. 131, 226 (D.D.C. 1982), *aff'd sub nom., Maryland v. United States,* 460 U.S. 1001 (1983) (subsequent history omitted).

40 *See generally MTS and WATS Market Structure*, CC Dkt No. 78-72, *Notice of Inquiry and Proposed Rulemaking*, 67 FCC 2d 757 (1978), *Third Report and Order,* FCC 82-579 (rel. Feb. 28, 1983), *Supplemental Order (Phase I)*, 94 FCC 2d 852 (1983), *Phase I Order Modified on Reconsideration*, 97 FCC 2d 682 (1983), *Phase I Order modified on further recon.*, 97 FCC 2d 834 (1984), *Phase I Order aff'd in part, remanded in part sub nom. National Association of Regulatory Utility Commissioners v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985); *Report and Order (Phase III)*, 100 FCC 2d 860 (1985), *Phase I Order modified on second further recon.*, 101 FCC 2d 1222 (1985), *aff'd sub nom. Amer. Tel. & Tel. Co. v. FCC*, 832 F.2d 1285 (D.C. Cir. 1987).

2. The development of a thriving information services market will repeat the circuitous route of CPE and equal access reform unless the Commission takes immediate action by requiring ILECs to open their networks.

The ILECs' current reaction to information services is hauntingly reminiscent of the dominant carriers' past responses to the prospect of competition in the CPE and long-distance markets. As in the past, the problem is not that the ILECs lack the means to respond to the needs of the information services marketplace. MCI, the Internet Access Coalition and others have outlined various proposals that, if implemented by the ILECs, would reduce the costs of handling Internet traffic and would relieve any alleged network congestion using technology available today.[41] The problem is that, without competition, the ILECs have insufficient incentive to offer more efficient technologies at affordable prices.

There is no reason to repeat the mistakes of the past.

B. The Commission Should Impose a New Regulatory Regime That Opens ILECs' Networks By Eliminating Entry Barriers For Competing Providers of Data-Oriented Services

The Commission's prior efforts to facilitate competition make clear that more than rhetoric is needed to cause dominant carriers to act contrary to their inherent inclinations. As it did in the *First Interconnection Order*, the Commission should take decisive action, adopting measures that *will* be effective in opening ILECs' networks to ISPs and competing data network providers. The

[41] MCI Comments at 7-10; IAC Comments at 9-22; Comments of Northern Telecom Inc., on the *Notice of Inquiry* in CC Dkt. No. 96-263, at 10-11 and note 15 (March 24, 1997) [hereinafter *Nortel Comments*].

requirements advocated by the Internet Access Coalition, WorldCom, MCI, and others would be a step in the right direction.

1. The Commission should require the unbundling of Part 69 access elements for competing data service providers and ISPs.

As noted above, a critical step toward opening ILEC networks to competition is the mandatory unbundling of Part 69 access elements. The Internet Access Coalition has noted that mandatory unbundling would not require significant revisions to the Part 69 access rules, given that the rules currently do not require bundling of access elements.[42] Moreover, having mandated ILEC unbundling of network elements that correspond to the Part 69 access elements in the *First Interconnection Order*, the Commission has effectively determined that the unbundling of Part 69 access elements is technically feasible.[43]

2. The Commission should disaggregate the loop access element into sub-elements.

The Ad Hoc Committee, like many commenters, strongly urges the Commission to unbundle the local loop into sub-elements, including the feeder, distribution, remote switches and line concentrators.[44] Subloop unbundling would allow ISPs to create separate networks for data and voice traffic, and would allow competitive local exchange carriers ("CLECs") to overcome length

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42 IAC Comments at 43-44.

43 11 FCC Rcd 14599, para. 366 (1996); *see also* IAC Comments at 44-45.